

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
and)	
)	Case No. 2:10-cv-13101-BAF-RSW
SIERRA CLUB)	Honorable Bernard A. Friedman
)	
Intervenor-Plaintiff,)	
)	Magistrate Judge R. Steven Whalen
v.)	
)	
)	
)	
DTE ENERGY COMPANY, and)	
DETROIT EDISON COMPANY)	
)	
Defendants.)	

**SIERRA CLUB’S RESPONSE TO DEFENDANTS’
MOTION FOR RECONSIDERATION OR CLARIFICATION**

Intervenor-Plaintiff Sierra Club respectfully requests that the Court deny Defendants' Motion for Reconsideration or Clarification (Dkt. 205). Defendants urge the Court to reconsider its April 9, 2014 Order, which granted Sierra Club's motion for leave to file an amended complaint. *See* Dkt. 202 (Order); *see also* Dkt. 186-1 (Sierra Club's proposed amended complaint). Defendants object to this Court's Order because the amended complaint includes a New Source Review ("NSR") claim regarding Unit 3 of the River Rouge Power Plant in River Rouge, Michigan. *See* Dkt. 186-1 ¶¶ 97-101 (the "River Rouge claim"). Although Defendants correctly note that they previously objected to the River Rouge claim, Defendants' motion should be denied because there is no need to reconsider or clarify the April 9 Order.

First, reconsideration is not warranted because the Court's Order reaches the right result. The April 9 Order permits Sierra Club to file its proposed amended complaint, which includes the River Rouge claim. And as Sierra Club detailed in its prior briefing, there is no valid reason to exclude from the case the River Rouge claim, which shares common questions of law and would likely have significant overlap in fact witnesses with the other claims raised in the Government's amended complaint. *See* Dkt. 195 (reply brief in support of motion to amend); *see also* Dkt. 186 (opening brief). As explained in those briefs, including the River

Rouge claim in this lawsuit promotes judicial economy, causes no undue delay, and results in no prejudice to Defendants. Dkt. 195 at 1-6. By contrast, if the River Rouge claim had been excluded, Sierra Club's interests would have been substantially impaired. *Id.* at 6-7. In sum, the Court had ample reasons for granting Sierra Club's motion to amend, and Defendants' objections to allowing Sierra Club to pursue the River Rouge claim in this proceeding were without merit.¹

Nor is there any need for clarification of the April 9 Order. Although Defendants suggest otherwise, Dkt. 205 at 3, the Order is clear: this Court has granted Sierra Club's request to file its amended complaint. Dkt. 202. Had the Court intended to exclude the River Rouge claim, Sierra Club's motion would have been denied in part. Instead, the April 9 Order grants Sierra Club's motion in its entirety. Because the Order is clear on its face, the clarification sought by Defendants is unnecessary.

¹ DTE's contention that the court lacks jurisdiction to hear the River Rouge claim because it was not preceded by a Notice of Intent to Sue, Dkt. 205 at 2, is meritless. New Source Review claims are not brought under 42 U.S.C. § 7604(a)(1); rather, these claims are pursued under 42 U.S.C. § 7604(a)(3), which does not require such pre-litigation notice. *See* Dkt. 195 at 6.

CONCLUSION

For the foregoing reasons, as well those set forth in the briefs supporting Sierra Club's motion for leave to file an amended complaint (Dkts. 186, 195), this Court should not disturb its April 9 Order. Defendants' motion should be denied.

Respectfully submitted,

s/Shannon Fisk

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Counsel for Plaintiff-Intervenor Sierra Club

Dated: April 18, 2014

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading, Sierra Club's Response to Defendants' Motion for Reconsideration or Clarification, was served via ECF on all counsel of record.

s/ Shannon Fisk
Counsel for Plaintiff-Intervenor
Sierra Club